IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 49 OF 2005

1. Mr. B. N. Modi,
Major, married, resident of
House No. 107/D,
Diamond Harbour Road,
Block 'F', New Alopore,
Calcutta-700 053.

2. Mr. Om Prakash Modi,
Major, married, resident of
House No. 23, 'E' Block,
7th Floor, Tee Gee Minar,
College Road, Chennai-600 006.

3. Mr. R. K. Modi,
Major, married, resident of
Divine Nutan Lakshmi,
Subhash Road No. 9,
Juhu, Mumbai. ... Applicants

versus

1. State of Goa,
Panjim, Goa.

2. M/s. Marmagoa Steel Ltd.
Plot No. 280, Eclate, Curtorim,
Salcete, Goa - 403 709. ... Respondents

Mr. U. G. Shetye, Advocate for the applicants.

Mrs. W. Coutinho, Additional Public Prosecutor for respondent no.1.

CORAM : N. A. BRITTO, J.

DATE : 6TH APRIL, 2005.

ORAL ORDER

Heard Mr. U. G. Shetye, the learned Counsel of the applicants who have invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure and Article 227 of the Constitution of India to quash and set aside the Order dated 16-12-2003 issuing process against them under Section 138 of the Negotiable Instruments Act, 1881(Act, for short) in C. C. No. 504/N/2003/C.

2. The applicants are the accused in the said Criminal case. It appears that the applicants' Company had issued a cheque for Rs.50,000/- to respondent no.2-Company which was returned dishonoured and after the statutory notice was served upon the applicants, the said complaint was filed by the respondent-Company.

3. The applicants after they were summoned in the said Criminal Case filed an application on or about 13-9-2004 before the learned J.M.F.C., Margao for recalling the process issued

against them but the applicants on or about 24-2-2005 chose to withdraw the same in view of the law laid down by the Hon'ble Supreme Court in the case of **Adalat Prasad** v. **Rooplal Jindal and others** ((2004) AIR SCW 5174).

4. The applicants have invoked the jurisdiction of this Court, as aforesaid on the ground that there were no allegations or averments in the complaint to the effect that the applicants were in charge of and responsible for the conduct of the affairs of the applicants' Company, namely M/s. Super Forgings and Steels Pvt. Ltd. who had issued the said cheque as on the date when the alleged offence took place.

5. Mr. Shetye, learned Counsel on behalf of the applicants has relied upon the observation made by the Hon'ble Supreme Court in para 17 in the case of **Subramanium Sethuraman** v. **State of Maharashtra and another** (2004 AIR SCW 5326) to the effect that the only remedy available to an aggrieved accused to challenge an order at an interlocutory stage is the extraordinary remedy under Section 482 of the Code and not by way of an application to recall the summons or to seek

discharge which is not contemplated in the trial of a summons case.

6. In my view, it is a well settled proposition of law with a catena of decisions of the Hon'ble Supreme Court that an order issuing process is revisable. This position has been taken note of by the Hon'ble Supreme Court by referring to 4 cases in para 2 in the case of **S. K. Bhatt** v. **State of U.P.** (2005 AIR SCW 1435) I may only refer to one of them namely **Rajendra Kumar Sitaram Pande and others** v. **Uttam and another** ((1999 3 SCC 134) wherein the Hon'ble Supreme Court has held that an order directing issue of process is not purely interlocutory order and that it could be termed as intermediate or quasi final order and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same. In fact, the Supreme Court in the case of **The State, through Special Cell, New Delhi** v. **Navjot Sandhu ((2003) 6 SCC 641)** has stated that the inherent power under Section 482 of the Code overrides other provisions including Section 397 but the remedy under it is not to be exercised when remedy under the Code or other statute is available. The Supreme Court further held that the inherent power is to be used only in the case where there is an abuse of

the process of Court or where interference is absolutely necessary for securing the ends of justice and it must be exercised very sparingly as cases which require interference would be few and far between. The most common case is where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction.

7. As far as revisional jurisdiction under Section 397 of the Code is concerned, the same has been concurrently conferred on two Courts, namely the Court of Sessions as well as this Court. In the case of **Jitendra R. Prabhu** v. **Laxmikant** (Criminal Revision Application No. 28/2004), after considering several decisions of this Court, it has been held that when jurisdiction has been conferred on two Courts concurrently, namely the Court of Sessions and the High Court, then it is certainly the choice of the superior court whether a revision application should be entertained by it or not by allowing the party to bypass the inferior court. It was also observed that it is now an unwritten law settled by propriety, practice and prudence that a party ordinarily should approach the Court of Sessions first, in revisional jurisdiction.

8. The grievance of the applicants can be redressed in revisional jurisdiction and by the Court of Sessions. The applicants have an ordinary remedy to invoke the revisional jurisdiction of the Court of Sessions and get the order issuing process against them set aside, in case the same was made illegally.

9. The petition/application of the applicants shall, therefore, be returned to them and they will be at liberty to present the same to the Court of Sessions, Margao. In case the said petition is presented within a period of 15 days after the same is returned to the applicants, the learned Sessions Judge, Margao is directed to register the same as a revision application against the order issuing process against the accused and dispose of the same as expeditiously as possible and in accordance with law.

N. A. BRITTO, J.

RD.